

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ANTHONY WHEELER,

Plaintiff,

v.

SALVADOR GODINEZ, RICHARD
HARRINGTON, KIMBERLY BUTLER, SGT.
BIRKNER, C/O HARRINGTON, C/O
STEPHENSON, C/O SHIELDS, C/O SPILLER, J.
REID and MIKE ATCHINGTON,

Defendants.

Case No. 13-cv-964-JPG-PMF

MEMORANDUM AND ORDER

This matter comes before the Court on the Report and Recommendation (“Report”) (Doc. 26) of Magistrate Judge Philip M. Frazier recommending that the Court deny plaintiff Anthony Wheeler’s motion for a partial declaratory judgment (Doc. 6). Wheeler has objected to the Report (Doc. 39).

The Court may accept, reject or modify, in whole or in part, the findings or recommendations of the magistrate judge in a report and recommendation. Fed. R. Civ. P. 72(b)(3). The Court must review *de novo* the portions of the report to which objections are made. *Id.* “If no objection or only partial objection is made, the district court judge reviews those unobjected portions for clear error.” *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999).

The Report found that Wheeler’s request for a declaratory judgment either applied to claims that had already been dismissed (Counts 6-9) or were premature in light of the posture of the case. Wheeler objects, advancing arguments similar to those in his original motion.

The Court has reviewed the matter *de novo* and agrees with Magistrate Judge Frazier.

Wheeler has not shown entitlement to a declaratory judgment at this time on any claims in this case. He may request declaratory judgment on the remaining claims in this case at a later, appropriate time such as, for example, in a summary judgment motion or at trial. Accordingly, the Court:

- **ADOPTS** the Report in its entirety (Doc. 26); and
- **DENIES without prejudice** Wheeler's motion for partial declaratory judgment (Doc. 6).

IT IS SO ORDERED.

DATED: February 13, 2014

s/J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE